



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency:

- ☒ Preproposal Statement of Inquiry was filed as WSR 07-12-014 ; or
☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) Administration of breath alcohol screening test.

Hearing location(s):

Washington State Toxicology Laboratory
2203 Airport Way S., Seattle WA 98134

Date: December 13, 2007 Time: 9:00 a.m.**Submit written comments to:**

Name: Barry K Logan PhD
Address: Washington State Toxicology Laboratory
2203 Airport Way S
Seattle WA 98134

e-mail barry.logan@wsp.wa.govfax (206) 262-6018 by (date) December 13, 2007**Assistance for persons with disabilities:** ContactKitty Jacobs (kitty.jacobs@wsp.wa.gov) by December 13, 2007

TTY () _____ or (206) 262-6000

Date of intended adoption: January 15, 2008

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Currently the Alco-Sensor III is the only breath alcohol screening device approved for use in the state of Washington, however this device is no longer being manufactured. An alternative device, the Alco-Sensor FST has been assessed by the Washington State Patrol Impaired Driving Section, and has been found to be an appropriate replacement. This rule making would add the Alco-Sensor FST to the list of approved breath test screening devices. It also clarifies the purpose for which the screening devices are approved, and the steps that must be followed to complete a valid test.

Reasons supporting proposal: Development of minimum standards and monitoring of compliance is necessary to ensure accurate measurements in impaired driving investigations.

Statutory authority for adoption: RCW 46.61.506**Statute being implemented:** 46.61.506, 46.20.308**Is rule necessary because of a:**

- Federal Law? ☐ Yes ☒ No
Federal Court Decision? ☐ Yes ☒ No
State Court Decision? ☐ Yes ☒ No
If yes, CITATION:

DATE11/6/2007

NAME (type or print)
Barry K Logan PhD, DABFT,

SIGNATURE

TITLE
State Toxicologist

CODE REVISER USE ONLY

CODE REVISER'S OFFICE STATE OF WASHINGTON FILED	
NOV 6	
TIME	4:45
WSR	07-22-110
AM	PM

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Barry K. Logan PhD, DABFT, Washington state toxicologist

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Barry K. Logan PhD, DABFT	Washington State Toxicology Laboratory 2203 Airport Way S., Seattle WA 98134	(206) 262 6000
Implementation..... Barry K. Logan PhD, DABFT	same	(206) 262 6000
Enforcement..... Barry K. Logan PhD, DABFT	same	(206) 262 6000

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared.

No identifiable small business impact. Affects regulation of government law enforcement agencies only.

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No: Please explain: This rule is exempted under RCW 34.05.328 5(a)(i).

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-010 Approval of devices. The following preliminary breath test (PBT) instruments are approved for use in the state of Washington as breath alcohol screening devices, subject to the requirements outlined in the following sections:

Alcosensor III (Intoximeters, St. Louis, MO).

Alcosensor FST (Intoximeters, St. Louis, MO).

Any other instruments (~~(on)~~) approved by the National Highway Traffic Safety Administration (NHTSA) (~~((approved products list))~~) will be considered for approval in Washington state on application to the state toxicologist, providing that a suitable program for maintenance, certification and operator training is also established and approved.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-020 Use of test results. The devices described in WAC 448-15-010 are approved for use in (~~((aiding police officers to form))~~) establishing probable cause that a subject has (~~((committed an offense involving the consumption of))~~) consumed alcohol. (~~((The test results, when))~~) For purposes of this section, valid results are considered those obtained from following the approved protocol, by a trained operator using an approved device which has been (~~((maintained and))~~) certified according to the rules described below(~~((, and carried out according to the approved test protocol,))~~). Valid results will show to a reasonable degree of scientific certainty, the test subject's breath alcohol concentration. (~~((The))~~) Valid results are (~~((therefore))~~) suitable to (~~((show whether an officer has))~~) assist in establishing probable cause to place a person under arrest for alcohol related offenses. These results may not be used on their own for determining, beyond a reasonable doubt, that a person's breath alcohol concentration exceeds a proscribed level such as anticipated under the 'per se' statutes for intoxication.

This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308).

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-030 Test protocol. ((After advising the subject that this is a voluntary test, and that it is not an alternative to an evidential breath alcohol test as described in chapter 448-13 WAC, the operator shall determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT. If the subject consents, the operator will check the temperature of the device to ensure that it is within the normal operating range.)) The operator must perform the test according to the policies and procedures approved by the state toxicologist. The operator will ((then press the "read" button to obtain a sample of ambient air, and ensure that this results in a reading of 0.003 or less. The subject will be asked to exhale into the device. The device will be activated towards the end of the subject's exhalation, to capture a portion of end expiratory breath for analysis)) perform the following test protocol:

(1) The operator shall determine by observation or inquiry, that the subject has not consumed any alcohol in the fifteen minutes prior to administering the test. If the subject has consumed alcohol during that period, the officer should not administer the screening test for probable cause purposes until fifteen minutes have passed. If the subject responds that they have not consumed any alcohol in the last fifteen minutes, the officer may offer the subject the opportunity to provide a breath sample into the PBT.

(2) Ensure a blank test result is obtained.

(3) Have the subject exhale into the mouthpiece with a full and continuous exhalation.

(4) Observe the results.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-040 Certification. Any PBT used as described in the preceding sections, must be certified at least ((every six months)) annually. In order to certify a PBT as accurate, the ((testing shall include at a minimum, a blank test of room air which must give a result of less than 0.005g/210L, and a test of a certified dry gas alcohol standard. The instrument must accurately measure the reference value within \pm 0.010g/210L. A record of

~~certification must be kept by the person responsible for calibration))~~ certifying agency must follow a protocol approved by the state toxicologist. Certification of PBTs can be performed by persons certified by the state toxicologist as PBT technicians, or by factory authorized representatives, provided that the protocol for certification approved by the state toxicologist is followed.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-050 PBT operators. Persons certified as ~~((DataMaster))~~ evidential breath test instrument operators as described in chapter 448-16 WAC ~~((448-13-150, who received their certification or recertification after September 1, 1998,))~~ shall be trained and authorized to perform the tests described herein on the PBT, for the purposes outlined in this section.

AMENDATORY SECTION (Amending WSR 99-06-047, filed 3/1/99, effective 4/1/99)

WAC 448-15-060 PBT technicians. Persons trained according to ~~((approved))~~ outlines ~~((prepared))~~ approved by the state toxicologist, in the proper procedures for certifying PBT~~((s))~~ instruments shall be certified as PBT technicians. Their responsibilities will include performing periodic certification and maintaining records on such certification. Wallet sized permits shall be issued to persons so qualified. The certification received on successful completion of the training must be renewed every three years. Persons certified as ~~((DataMaster))~~ evidential breath test instrument technicians as described in chapter 448-16 WAC ~~((448-13-170))~~ are also certified to perform all the duties of PBT technicians.